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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

ALTS Petition
for Declaratory Ruling:
Loop Provisioning

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DA00-1141

CC Docket Nos. 98-147, 96-98,
98-141, NSD-L-00-48

COMMENTS OF WORLDCOM, INC.

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Comments of WorldCom, Inc.

In Public Notice DA 00-1141, released May 24, 2000, the Commission requests comment on the petition that the Association for Local Telecommunications Services (ALTS) filed on May 17, 2000 seeking declaratory rulings on a number of loop provisioning issues.¹ ALTS filed the petition to get relief from some of the roadblocks that incumbent local exchange carriers (ILECs) have erected to hinder its members' access to unbundled loops. WorldCom, Inc. (WorldCom) has run into many of the same roadblocks and, like ALTS, seeks expeditious Commission action. As WorldCom explains in what follows, in some instances that action should come through prompt resolution of issues pending in open dockets. In other cases, WorldCom believes that action should come in the form of a new rulemaking. Finally, in other cases in which ALTS correctly observes that the ILECs continue to act in direct contravention to clear Commission rulings, the Commission should make clear that complaints proving such violations will be promptly addressed and fairly resolved.

¹ Petition for Declaratory Ruling on Broadband Provisioning of the Association for Local Telecommunications Services, DA 00-1141, CC Docket Nos. 98-147, 96-98, 98-141, and NSD-L-00-48, dated May 17, 2000 (ALTS Petition).

I. Introduction

The local loop -- the direct connection to the end user customer -- remains a bottleneck controlled by the ILECs, as the Commission recently recognized in both the UNE Remand Order and the Bell Atlantic-GTE merger Order.² Unimpeded and nondiscriminatory access to unbundled ILEC loops is the single most important prerequisite for competitive local exchange carriers (CLECs) to compete effectively with ILECs in the provision of local telecommunications services -- alone or as part of an integrated product. The ILECs fully recognize this and, in the more than four years since Congress passed the Telecommunications Act, have been incredibly persistent and resourceful in their efforts to deny CLECs such access.

To date, the Commission has relied largely upon its formal complaint process to address allegations of ILEC non-compliance. As ALTS explains in its petition, however, it has become increasingly apparent that individual complaints are not readily resolved when there are no standards in place for the Commission (and state commissions) to use as the basis for making determinations. Therefore, we strongly agree with ALTS that the time has come for the Commission to implement binding federal rules that establish loop provisioning performance standards that can be used as the basis for imposing penalties and for ILEC non-compliance. Those standards must be constructed in terms that ensure that the ILECs provision loops as quickly and accurately for CLECs as they do for themselves.

² In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, released Nov. 5, 1999 (UNE Remand Order) at para. 190; In re Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 210 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order, CC Docket No. 98-184, released June 16, 2000, at para. 269.

In its petition, ALTS documents a plethora of anticompetitive ILEC activities (and inactivities) relating to loop provisioning that have harmed its members' ability to offer services to customers in a timely fashion. Many of these actions and inactions have kept CLECs from providing service at all.

Some issues that ALTS raises in its petition involve the failure of ILECs to provide unbundled loops or subloops in direct disregard of clear and explicit Commission rules. The very fact that ALTS feels compelled to seek declaratory rulings on these is a sad commentary on the ILECs' intransigence. The Commission must not reward that intransigence, but rather should make it clear that it will set substantial penalties for continued intransigence by opening up an expedited rulemaking proceeding to establish penalties and a process for setting and implementing penalties and compensating CLECs. The Commission also should make clear that its complaint process is available to promptly resolve claims that the ILECs are violating clearly stated Commission rules.

Other specific issues that ALTS raises have to do with ILECs provisioning of loops for CLECs in an inferior -- and therefore discriminatory -- fashion relative to the way they provision loops for themselves. The Commission should acknowledge that these issues cannot be efficiently handled through its complaint process and instead, should open an expedited proceeding to identify objective provisioning performance standards that are easily measurable and that, where not met, would be the basis for -- and automatically trigger -- penalties.

Many of the issues, in one context or another, are presently before the Commission in various petitions in the UNE Remand proceeding, the Line Sharing proceeding, and SBC's

request for a waiver of the SBC-Ameritech merger conditions with respect to Project Pronto.³ To that end, WorldCom respectfully requests that the Commission answer the outstanding questions pending in those proceedings, as well as turning to the few new issues raised by ALTS. The arguments presented herein are served to support WorldCom's positions in the UNE Remand, Line Sharing, and SBC Project Pronto proceedings, and respond to any questions that may remain open after the Commission has issued decisions in those matters.

In these comments, WorldCom addresses each of the issues in the order they appear in the Public Notice.

II Discussion

A. ILECs already are required to provide high-capacity loops to any requesting CLEC on an unbundled and nondiscriminatory basis. The Commission should open a proceeding to develop penalties for ILECs who fail to meet their requirements under Commission rules and the Act.

ALTS seeks a declaratory ruling that ILECs are required to provide high-capacity loops to any requesting CLEC on an unbundled and nondiscriminatory basis. Such a ruling should be unnecessary because it is incontrovertible that ILECs already are required to do so. The UNE Remand Order plainly states:

We conclude that LECs must provide access to unbundled loops, including high-capacity loops, nationwide. We find that requesting carriers are impaired without access to loops, and that loops include high-capacity lines, dark fiber, line conditioning, and certain inside

³ See UNE Remand Order; In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket Nos. 98-147, 96-98, FCC 99-355 (released Dec. 9, 1999) (Line Sharing Order); In the Matter of SBC Communications Inc. - Ownership of Certain Advanced Services Equipment Under the SBC-Ameritech Merger Conditions, Public Notice, CC Docket No. 98-141, ASD File Np. 99-49 (released February 18, 2000).

wire.⁴

We disagree with incumbent LECs that high-capacity loops should be excluded from the definition of the loop. High-capacity loops retain the essential characteristic of the loop: they transmit a signal from the central office to the subscriber, or vice versa.⁵

We disagree with incumbents' assertions that we should not unbundle high-capacity loops because competitive LECs have successfully self-provisioned loops to certain large business customers.... That some competitive LECs, in certain instances, have found it economical to serve certain customers using their own loops suggests to us only that carriers are unimpaired in their ability to serve those particular customers. This evidence tells us nothing about the customer the competitor would like to serve but cannot because the cost of building a loop from the customer premises to the competitive LEC's switch is prohibitive.⁶

With such a clear statement of the requirement, and such a clear rejection of the ILEC proposal that high-capacity loops not be unbundled, the Commission should not find it necessary to restate the requirement. As ALTS points out, however, the ILECs continue to undertake ways to deny CLECs access to unbundled loops. Therefore, the Commission should make clear that ILECs that do not obey the clear unbundling requirements in its rules will be subject to penalties, and that the Commission's so-called "rocket docket" is available to promptly resolve such allegations. Concurrently, the Commission should open an expedited rulemaking proceeding to establish those penalties. Expeditious action is necessary because wherever ILECs refuse to make unbundled loops available, consumers are denied competitive alternatives.

As indicated by the discussion of anticompetitive ILEC behavior in the ALTS petition, typically the ILECs are too sophisticated to simply refuse CLECs access to unbundled high-

⁴ UNE Remand Order, at para. 165.

⁵ Id., at para. 176.

⁶ Id., at para. 184.

capacity loops outright. Rather they provision those loops for CLECs in an inferior, discriminatory fashion relative to the way they provision those same loops for their own retail services. As a result, the end user customer perceives the CLEC as offering an inferior product. The Commission should open an expedited rulemaking proceeding to devise explicit performance standards that can be used to make a timely and objective determination of whether the ILEC is behaving illegally and the penalties and other remedies that would automatically be imposed if the ILEC failed to meet the standards.

In its petition, ALTS describes another form of discrimination practiced by the ILECs -- providing CLECs inferior access to "loop make-up data," despite the requirements of the Advanced Services First Report and Order⁷ and the UNE Remand Order. This form of discrimination cannot be addressed by performance standards -- it will require use of the Commission's complaint (rocket docket) process -- but the Commission can and should establish penalties in the rulemaking proceeding for failure to provide nondiscriminatory access to the data. WorldCom recommends the use of a third party clearinghouse for loop make-up data.

One particular concern raised by ALTS is that ILECs have begun the widespread deployment of digital loop carriers (DLC) to remote terminals. Because they are no longer using the copper loop between their remote terminals and central offices, the ILECs contend they are no longer obligated to make it available to CLECs even if they have not removed that copper. WorldCom agrees with ALTS that "ILECs cannot circumvent their federal obligations to provide

⁷ See, generally, In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

loops to CLECs simply by building an new network.”⁸ The Commission should make a declaratory ruling that ILECs must continue to meet their loop unbundling obligations by providing copper to those CLECs who need a copper loop -- either by “swapping” out an in-service fiber loop that the ILEC currently is using to serve the customer with a dormant copper loop or by use of a “work-around” configuration. At the same time, the Commission should make clear that CLECs who seek unbundled access to the ILECs’ new fiber-network at any technically feasible point also have the right to such access.

B. Rule 51.319 requires ILECs to provide the entire loop to CLECs that seek to provide integrated voice and data services over a shared line.

It is unfortunate that the ILECs’ consistent and blatant actions against line sharing have prevented customers from receiving voice and data services from their providers of choice, and necessitated the instant petition by ALTS. WorldCom already has raised these issues in its petitions for clarification of the Line Sharing and UNE Remand Orders and believes that an order from the Commission in the Line Sharing proceeding will clarify that CLEC to CLEC line sharing is permitted.⁹

Congress defined the local loop as “a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end-user customer premises.”¹⁰ In December, 1999, the FCC issued the Line Sharing Order, the effect of which was to unbundle the high frequency portion of the spectrum running over the local loop from the customer premises

⁸ ALTS Petition, at 12.

⁹ Line Sharing Order, at para. 45.

¹⁰ 47 C.F.R. § 51.319(a) (1999).

to the central office.¹¹

This issue concerns more than the ability of CLECs to provide xDSL over the high frequency spectrum. It also concerns the right of CLECs to team with each other to provide voice and data services over the same loop, and to have the ILECs perform the necessary work in the central office to make that line sharing possible. As the FCC noted in the Line Sharing Order, “unbundling basic loops, with their full capacity preserved, allows competitors to provide xDSL service.”¹²

At the time that the Line Sharing Order was issued, the Commission noted that it was premature to consider whether CLECs “must provide analog voice service in order to enter the market for voice-compatible xDSL service.”¹³ The Commission expressed confidence that “competitors can rise to this challenge,” but still found that a CLEC’s ability to provide advanced services would be impaired if they were also required to provide voice services over the same loop in all circumstances.¹⁴ WorldCom is already providing voice service to customers in New York, and needs the Commission to protect its right to access an entire unbundled loop and to partner with any provider of xDSL that it chooses, be it CLEC, DLEC, or ILEC.

The Commission correctly recognized that not all CLECs are able to provide analog voice service, or choose to.¹⁵ Marketplace forces demand that those CLECs that are able to provide

¹¹ See, generally, Line Sharing Order.

¹² Line Sharing Order, at para. 190.

¹³ Line Sharing Order, at para. 48.

¹⁴ Line Sharing Order, at para. 45.

¹⁵ Line Sharing Order at para. 49.

voice service be able to do so, and regulation is required to protect the right to meet that demand.¹⁶ Accordingly, the Commission should consider any aspect of ALTS' petition that is not addressed by an Order in the Line Sharing proceeding, and specifically order that CLEC to CLEC line sharing is permitted over the UNE platform.

C. The Commission should adopt intervals for ILEC provisioning of UNE loops for CLECs that ensure that the ILECs provision loops as quickly and accurately for CLECs as they do for their own end-user customers.

In its petition, ALTS explains various ways that ILECs unnecessarily extend the intervals for provisioning loops to CLECs and shows how these intervals are substantially greater for CLECs than for ILECs. ALTS also explains that adoption of national rules based on performance standards, with automatic penalties for failure to meet the standards, would be a far more effective way to resolve these discriminatory provisioning issues than the complaint process.¹⁷ WorldCom encourages the Commission to open an expedited rulemaking proceeding to implement performance standards and penalties.

For DSL loops, ALTS proposes that the Commission adopt as a nationwide standard the provisioning interval standards already put in place by the Texas Public Utility Commission with the additional requirement that ILECs are subject to the nondiscrimination provisions of the Act with regard to their affiliates. "As such, if a shorter loop provisioning interval is provided to an incumbent affiliate, the incumbent must provide that shorter interval to all competitive LECs."¹⁸

WorldCom suggests a slightly modified approach to performance standards. Unless

¹⁶ See Line Sharing Order, at para. 50.

¹⁷ ALTS Petition, at 25.

¹⁸ ALTS Petition, at 28.

performance standards are directly tied to the intervals the ILECs meet when provisioning loops for themselves, there is a danger that the provisioning intervals met for CLECs will not improve over time as technological change reduces provisioning time -- absent a showing of discrimination. But a complaint alleging discrimination cannot be proven without access to data, and unless an ILEC is required to provide on-going data on its performance intervals when provisioning for both itself and CLECs, there will be no refreshed data available in the future to facilitate these comparisons. Thus neither state commissions nor the FCC will be able to make a timely determination as to whether an ILEC has acted in a discriminatory fashion. WorldCom therefore recommends that the ALTS proposal be modified to require ILECs to provide on-going data on provisioning intervals and require an automatic downward adjustment to the standards to correspond with improvements in ILEC self-provisioning. Similar performance standards should be implemented for non-DSL loop provisioning.

D. ILECs are required to facilitate the provision of voice and data services over a shared subloop.

The issue of subloop unbundling was squarely addressed in the UNE Remand Order, where the FCC determined that CLECs were entitled to unbundled access to the subloop.¹⁹ The Commission defined the subloop in the UNE Remand Order as “the portion of the loop that can be accessed at terminals in the incumbent’s outside plant.”²⁰ This includes “all features, functions, and capabilities of the transmission facilities, including dark fiber and attached

¹⁹ UNE Remand Order, at para 209.

²⁰ Id., at para. 206.

electronics.”²¹ An accessible terminal is “a point where technicians can access the wire or fiber within the cable without removing a splice case to reach the fiber within.”²²

The Commission recognized numerous “access points” existed where a technician could access the subloop, and stated that the broadness of the definition allowed “maximum flexibility” for CLECs, in order to “best promote the goals of the Act.”²³ Unfortunately, without an unequivocal statement by the Commission that requires ILECs to permit CLECs to access the subloop at any technically feasible point, ILECs will limit CLECs to access only the high frequency portion of the subloop. This is the exact problem that ALTS discusses in its Petition. ALTS states that “the SBC Proposal flatly states that CLECs cannot obtain ‘DLC subloops’ for voice services only.”²⁴

The UNE Remand Order does not support SBC’s position. When the Commission ordered the unbundling of subloops in the UNE Remand Order, the Commission did not distinguish between the high frequency and low frequency portions of the spectrum.²⁵ The Commission unbundled the entire subloop.²⁶ SBC’s restriction is a novel, but unfounded, interpretation of a very explicit Commission statement, and therefore requires yet another message to the ILEC community: the entire subloop is an unbundled network element, and

²¹ Id., at para. 167.

²² Id., at para. 206.

²³ Id., at para. 207.

²⁴ ALTS Petition, at 13.

²⁵ Id., at para. 209.

²⁶ Id., at para. 206-07.

CLECs are entitled to access both the voice and data frequencies.

Nonetheless, these issues are best addressed by the Commission in resolving the outstanding petitions and comments in the SBC Project Pronto and UNE Remand proceedings presently before the Commission. However, ALTS' claim that SBC's Project Pronto will specifically exclude CLECs from access to the unbundled subloop for the provision of voice services requires immediate action.²⁷ The Commission must affirm, either in the UNE Remand proceeding or in response to ALTS' petition, that the UNE Remand Order gave CLECs the right to access the entire subloop as an unbundled network element.²⁸

The Commission should establish a time frame within which an ILEC must complete any request for unbundled access to a loop or subloop, and if an ILEC fails to provide access within the prescribed time period, sanctions should be assessed against that ILEC.

On a related issue, WorldCom already has petitioned for Reconsideration of the UNE Remand Order to add the requirement of CLEC access to ILEC databases containing all relevant data on remote terminating points (vaults, pedestals, etc.) and other facilities needed to make subloop unbundling operational.²⁹ Although the Commission ordered ILECs to provide access to analogous data relating to loops, its UNE Remand Order mandating subloop unbundling accidentally remained silent on access to data relating to subloops. WorldCom again encourages the Commission to redress this omission expeditiously by ordering ILECs to provide CLECs

²⁷ ALTS Petition, at 13.

²⁸ UNE Remand Order, at para. 206-207.

²⁹ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Petition of MCI WorldCom, Inc., for Reconsideration, filed February 17, 2000, (WorldCom Reconsideration Petition), at 23-24.

nondiscriminatory access to relevant subloop data. WorldCom proposes the use of a third party clearinghouse for the subloop-related data.

E. The Commission should require ILECs to provision special access circuits for requesting carriers within the same interval in which they provision these circuits for their own retail services.

In its petition, ALTS explains in great detail the role that special access circuits play to allow competitive carriers to offer a wide diversity of telecommunications services, ranging from voice grade local service to dedicated Internet access to DSL access to long distance service. ALTS also identifies Commission-generated evidence that ILEC provisioning of special access circuits severely discriminates against competitive providers.

WorldCom currently leases tens of thousands of ILEC special access circuits for the provision of exclusively local services to its customers. While WorldCom seeks to convert its special access circuits used to provide exclusively local service or a significant amount of local service to UNE loops or UNE loop-transport combinations, it undoubtedly will continue to use special access circuits to provide local service. It therefore is important that the provisioning intervals and CLEC access to loop make-up information be the same for special access circuits as they are for unbundled loops. Provisioning of these circuits should be subject to the same performance standards and penalties as requested above.

In addition, once RBOCs meet the 271 checklist and are allowed into the long distance market, it will be important to have performance standards in place for special access circuits used for long distance, since the RBOCs will be competing with interexchange carriers (IXCs) and will have an incentive to degrade IXC access.

- F. The Commission-set federal deadline by which CLECs should have provided access to all ILEC interfaces passed more than three years ago. RBOCs have demonstrated that the “carrot” of being allowed into long distance market by meeting the OSS requirement in the 271 checklist is not a strong motivation. The Commission therefore should resort to the “stick” motivation of financial penalties.**

In its Local Competition First Report and Order,³⁰ the Commission ordered ILECs to provide CLECs access to all ILEC interfaces by January 1, 1997. Most ILECs have made no attempt to meet that requirement even three and a half years later. The “carrot” of Section 271 of the Act apparently has not proven much of a motivator for the RBOCs. Given the lack of competitive pressure from entrants that did not have to depend on RBOC OSS systems, it has been sound RBOC business strategy to remain intransigent in providing CLECs access to its OSS, and thereby protect their local market from competition, even if that meant a delay in entering the long distance market. With no market forces available to motivate the ILECs to comply with the law, the motivational “stick” of imposing penalties for failing to provide electronic access to OSS now is critical. WorldCom proposes that the Commission set January 1, 2001 as the deadline for ILECs to fully implement electronic OSS access that provides CLECs the same access to these databases as they have. Specific penalties should be set, to be imposed each month thereafter that the ILECs fail to meet the OSS requirements.

- G. The Commission should prohibit ILECs from imposing charges on CLECs to conditions loops for DSL that are not based on forward-looking costing and pricing principles.**

WorldCom was one of many parties to file a petition for reconsideration of the UNE

³⁰ In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, released August 8, 1996, at para. 252.

Remand Order seeking a prohibition on ILECs imposing conditioning charges for DSL loops that do not comport with the Commission's forward-looking costing and pricing principles.³¹ Rather than re-argue that issue here, the Commission should address the issue expeditiously in that proceeding.

H. The Commission should open up an expedited rulemaking proceeding to set penalties for ILEC failure to comply with its loop provisioning rules.

As discussed in detail in the ALTS petition and above, because of the lack of standards and ILEC data, the Commission's complaint process is not an effective way to resolve most disputes concerning ILEC failure to comply with its loop provisioning rules. The Commission should open an expedited rulemaking proceeding to establish performance standards that will be exceedingly helpful in any enforcement process. Further, we encourage the Commission to use its authority under Section 503 of the Act³² to establish the penalties and other remedies to be imposed when ILECs fail to comply with Commission rules.

³¹ WorldCom Reconsideration Petition, at 15-17.

³² See 47 U.S.C. 503(b)(1)(B) and (2)(B).

III. Conclusion

WorldCom respectfully requests that the Commission expeditiously render decisions in the UNE Remand, Line Sharing, and SBC-Ameritech Request for Waiver of Merger Conditions proceedings on the open issues that are relevant to the issues raised here by ALTS. Moreover, WorldCom requests that the Commission initiate an expedited rulemaking proceeding to identify ILEC loop provisioning performance standards and to establish the penalties and other remedies to be imposed when ILECs fail to comply with Commission rules.

Respectfully submitted,

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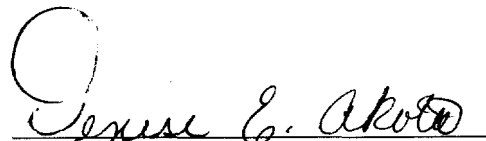
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